FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 598/2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

CORAM : Smt. Vasanti A. Naik, J.
DATE : 16th June, 2007.

Heard the learned counsel for the parties.

The appellant is the original plaintiff. A suit was filed by the plaintiff for mandatory injunction directing the defendant to remove the construction to the extent of 4 ½ inches from the plaintiff's side. The plaintiff had also sought damages for destruction of the wooden rafters from the roof of the plaintiff's house.

The trial Court by the judgment and decree dated 03.03.2004 directed the defendant to remove the 4 ½ inches construction of the wall on the first floor from the plaintiff's side so that the plaintiff may use the said portion whenever he wanted to use it. The trial Court held that the plaintiff proved that the defendant had started illegal construction on the 4 ½ inches wall which belonged to the plaintiff. The trial Court consequently granted the mandatory injunction directing the defendant to remove the construction but the trial Court held that the plaintiff was not

entitled to claim any damages for the destruction of the central rafter as the plaintiff has not proved the case.

In appeal by the defendant, the District Judge, Nagpur reversed the findings recorded by the trial Court so far as it related to the grant of mandatory injunction and held that there was no propriety in directing the defendant to demolish 4 ½ inches of wall from the side of the plaintiff. The appellate Court, on a re-appreciation of the material evidence on record, held that the construction made by the defendant on the common wall was not illegal. Since no appeal was filed by the plaintiff against the judgment of the trial Court refusing to grant the plaintiff the other ancillary relief, the appellate Court held that there was no question of granting said relief to the plaintiff at such stage. Consequently, the suit filed by the plaintiff was dismissed by the judgment and decree passed by the appellate Court on 08.07.2005.

Though the trial Court had, on an appreciation of the evidence tendered by the parties on record, granted the relief of mandatory injunction in favour of the plaintiff, the first appellate Court reversed the findings recorded by the trial Court in that regard by re-appreciating the material evidence on record. The first appellate Court held that the

plaintiff had not produced cogent evidence on record to show that the plaintiff was the owner of 4 ½ inches of wall from his side. The first appellate Court held that the wall was a common wall, and therefore, there was no justification whatsoever for issuing the direction to the defendant to demolish the construction made by the defendant. The first appellate Court, as a final fact finding Court, had jurisdiction to re-appreciate the material evidence and reach to yet another conclusion. The findings recorded by the appellate Court are just and reasonable.

Since the findings recorded by the appellate Court do not give rise to any substantial question of law, the Second Appeal is dismissed with no order as to costs.

JUDGE

APTE